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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL,
2015

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

July, 2015

*Paper laid
by the chair
Justice and Legal
Affairs, Hon
Samuel Ngunjiri
on Tuesday 7/7/15
Lg*

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PART 1

LIST OF APPENDICES

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1. PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the report of the Committee on the Vetting of Judges and Magistrates (Amendment) Bill, 2015.

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) **To study and review all legislation referred to it;**
- d) *To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) *To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and*
- f) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

1.1. Committee Membership

The Committee was constituted on Thursday, 16th May, 2013 and currently comprises the following:-

- | | | |
|--|---|------------------|
| 1. Hon. Samuel Chepkong'a, M.P. | – | Chairperson |
| 2. Hon. Priscilla Nyokabi, M.P. | – | Vice Chairperson |
| 3. Hon. Njoroge Baiya, M.P. | | |
| 4. Hon. Muriithi Waiganjo, M.P. | | |
| 5. Hon. Ndirangu Waihenya, M.P. | | |
| 6. Hon. Florence Kajuju, M.P. | | |
| 7. Hon. Kang'ata Irungu, M.P. | | |
| 8. Hon. Benson Mutura, M.P. | | |
| 9. Hon. John Njoroge Chege, M.P. | | |
| 10. Hon. William Cheptumo, M.P. | | |
| 11. Hon. Mohamed Abdi Haji, M.P. | | |
| 12. Hon. Sammy Koech, M.P. | | |
| 13. Hon. Moses Cheboi, M.P. | | |
| 14. Hon. Paul Bii, M.P. | | |
| 15. Hon. Charles Gimose, M.P. | | |
| 16. Hon. Johanna Ng'eno, MP. | | |
| 17. Hon. Boniface Otsiula, M.P. | | |
| 18. Hon. David Ouma, M.P. | | |
| 19. Hon. Neto Agostinho, M.P. | | |
| 20. Hon. Kaluma Peter, M.P. | | |
| 21. Hon. Fatuma Ibrahim Ali, M.P. | | |
| 22. Hon. Ben Momanyi Orari, M.P. | | |
| 23. Hon. Tom J. Kajwang', M.P. | | |
| 24. Hon. (Bishop) Mutua Mutemi, M.P. | | |
| 25. Hon. Olago Aluoch, M.P. | | |
| 26. Hon. (Dr) Christine Oduor Ombaka, M.P. | | |
| 27. Hon. Munuve G. Mati, M.P. | | |
| 28. Hon. Mwamkale William Kamoti, M.P. | | |
| 29. Hon. James Bett, M.P. | | |

1.3. First Reading of the Vetting of Judges and Magistrates (Amendment) Bill, 2015

The Vetting of Judges and Magistrates (Amendment) Bill, 2015 was read for the first time on 30th April, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with Standing Order 127 (1) which states as follows:-

“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”

1.4. Public participation in the consideration of the Bill

Article 118 (1) (b) of the constitution states as follows:-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) states as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

Pursuant to these provisions, the Committee invited the public through the Daily Nation and Standard newspapers of 8th May, 2015 to make representations on the Bills (See appendix 3). There was however no response from the public.

1.5 Consideration of the Bill and adoption of Committee’s report

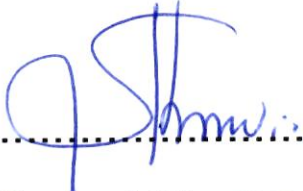
The Committee considered the Bill on 30th June, 2015 and did not propose amendments. At its sitting of 7th July, 2015, the Committee considered and adopted its report on the Bill. The adoption of the report was proposed by Hon. Olago Aluoch and seconded by Hon. John Njoroge. There was no dissenting voice to adoption of the report. Minutes of the Committee sitting adopting the report are annexed hereto as appendix 1. The list of Members who attended the sitting that adopted the report is also annexed as appendix 2.

1.6. Acknowledgement

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly which provided overall guidance and technical support without which its work would not have been possible.

Hon. Speaker Sir,

On behalf of the Committee, I now wish to table this report in the House.

SIGNED 

**Hon. Samuel Chepkong'a, MP
(Chairperson)
Departmental Committee on Justice and Legal Affairs**

DATE 

2. BACKGROUND

The judiciary is a very important institution in any democratic state. Its key role is in the preservation of the rule of law, protection of fundamental rights and freedoms, and the promotion of access to justice. The need to vet judges was informed by the loss of confidence in the judiciary and the need to restore confidence. The people of Kenya therefore decided to anchor this process in the Constitution to show the seriousness and need to ensure that it is done to a logical conclusion.

The Mandate of the Judges and Magistrates Vetting Board is drawn from section 23 of the 6th schedule of the Constitution of Kenya and the Vetting of Judges and Magistrates Act, 2011(as amended).

The Vetting of Judges and Magistrates (Amendment) Bill, 2015 was introduced in the House by the Departmental Committee on Justice and Legal Affairs and its principal objective is to amend section 23 of the Vetting of Judges and Magistrates Act of 2011 which states as follows:-

“Time frame

- (1) The vetting process once commenced shall not exceed the period specified by this section.***
- (2) The vetting process, once commenced, shall be concluded not later than the 31st December, 2015 and any review of a decision of the Board shall be heard and concluded within the above specified period.***
- (3) Despite subsection (2), the Board shall conclude the process of vetting all the judges, chief magistrates and principal magistrates not later than the 28th March, 2013 and any review of a decision of the Board shall be heard and concluded within the above specified period”***

The amendment is intended to allow for completion of matters which have been commenced by the Board but are not finalized before the time prescribed under the Act lapses. In this regard, the amendment proposes to delete subsection (3) and substituting it with the following:-

“(3) Where the time prescribed in this section lapses when the Board has commenced the hearing of a matter but it has not made a determination under section 21, the time shall be deemed to have been extended until such determination”

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms of the people of Kenya. The Bill does not concern county governments in terms of Article 109(3) of the Constitution neither does it affect the functions and powers of county governments recognized in the Fourth Schedule to the Constitution.

The Bill shall occasion additional expenditure of public funds and the expenditure has been duly provided for in the budget for the financial year 2015/2016.

2.1 Reasons for extension of time

The genesis of Section 23 of the Judges and Magistrates Act was the amendments introduced in December, 2012, which set a timeline within which judicial officers were to be vetted before they handled 2013 general election petitions. The Board was however unable to meet the deadline of 28th March, 2013 because of shortage of Commonwealth Judges. The Board got the services of only two Judges in February, 2013 and subsequently one in March, 2013. This hampered progress as only two panels could sit at a time in February while only one could sit in March.

The reasoning behind the proposed enabling provision goes hand in hand with the provision in Section 23(4) of the Act that gives the Board one month beyond the effective date to wind up its affairs. The intention was that if for any reason there was pending review or determination as at 31st December, 2015, it could be delivered after that date without it being deemed as an act done out of time. The Board intends to complete its work by 31st December, 2015 however it was prudent to have this enabling provision as a safety net.

The Board was awaiting for this amendment to proceed with the vetting of 2 Judges and 70 Chief and Principal Magistrates. The affected officers had been requesting to be vetted as it was psychologically stressful to be kept waiting indefinitely. Some had already been served with notice of complaints and notice to appear before the Board. Some officers could be considered for promotion until vetted. The magistrates affected were the senior most in ranking order, and it was only fair that they are vetted immediately to give them a fair chance as opportunities for promotion arise.

The term of the Board expires on 31st December, 2015. The Board is required by the Constitution to vet all judicial officers who were serving as at 27th August, 2010. Accordingly, all the Judges, chief magistrates and principal magistrates must be vetted and their reviews dispensed with, notwithstanding the limitation in Section 23 (3).

3. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

In line with Article 118(1)(b) of the constitution of Kenya and Standing Order 127(3) the Committee put up an advertisement in the Standard and Daily Nation newspapers of 9th May, 2015, a copy of which is annexed hereto as appendix 3 inviting the public to make representations on the Bill. There was however no response from the public.

4. CONSIDERATION OF THE BILL BY THE COMMITTEE

The Committee considered the Bill on 30th June, 2015 and did not propose any amendments to it. It should be noted that the Bill originated from the Committee.

5. RECOMMENDATIONS

The Committee recommends that the House passes the Bill in its published form.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

APPENDIX 1

**MINUTES OF THE FIFTY SECOND SITTING OF THE DEPARTMENTAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 7TH
JULY, 2015 AT 10 A.M. AT THE MEDIA CENTRE, MAIN PARLIAMENT
BUILDING**

PRESENT:-

- | | | | |
|-----|--------------------------------|---|-------------------------|
| 1. | Hon. Samuel Chepkong'a, MP | - | Chairperson |
| 2. | Hon. Priscilla Nyokabi, MP | - | Vice Chairperson |
| 3. | Hon. Benson Mutura, MP | | |
| 4. | Hon. Fatuma Ibrahim Ali, MP | | |
| 5. | Hon. Florence Kajuju, MP | | |
| 6. | Hon. Johanna Ngeno, MP | | |
| 7. | Hon. Olago Aluoch, MP | | |
| 8. | Hon. Mutua Mutemi (Bishop), MP | | |
| 9. | Hon. James Bett, MP | | |
| 10. | Hon. Mohamed Abdi Haji, MP | | |
| 11. | Hon. Munuve Mati John, MP | | |
| 12. | Hon. Tom.J. Kajwang', MP | | |
| 13. | Hon. Ndirangu Waihenya, MP | | |
| 14. | Hon. Neto Agostinho, MP | | |
| 15. | Hon. John Njoroge Chege, MP | | |
| 16. | Hon. Ben Momanyi Orori, MP | | |
| 17. | Hon. David Ouma Ochieng, MP | | |
| 18. | Hon. Moses Cheboi, MP | | |
| 19. | Hon. Boniface Otsiula, MP | | |
| 20. | Hon. Muriithi Waiganjo, MP | | |
| 21. | Hon. Dr. Christine Ombaka, MP | | |

ABSENT:-

22. Hon. Kang'ata Irungu, MP
23. Hon. William Cheptumo, MP
24. Hon. Sammy Koech, MP
25. Hon. Kaluma Peter, MP
26. Hon. William Mwamkale, M.P
27. Hon. Charles Gimose, MP
28. Hon. Paul Bii, MP
29. Hon. Njoroge Baiya, MP

SECRETARIAT:-

- | | | |
|--------------------------|---|------------------------|
| 1. Mr. George Gazemba | - | Senior Clerk Assistant |
| 2. Ms. Mary L. Lemerelle | - | Clerk Assistant III |
| 3. Mr. Ahmed Salim | - | Clerk Assistant III |

MIN NO. JLA/203/2015:- - **PRELIMINARIES**

The Chairperson called the meeting to order at 10.30 a.m. Prayer was said by Hon. Tom J. Kajwang.

MIN NO. JLA/204/2015:- **CONSIDERATION AND ADOPTION OF REPORTS ON BILLS**

(i) The Ethics and Anti-Corruption Commission (Amendment) Bill, 2015

The Committee considered and adopted its report on the Ethics and Anti-Corruption Commission (Amendment) Bill, 2015. The adoption of the report was proposed by Hon. Priscilla Nyokabi and seconded by Hon. (Bishop) Mutua Mutemi. No Member dissented to the adoption of the report.

The Committee however observed a requirement that Diaspora applicants for positions at the Commission submit local clearances from the Kenya Revenue Authority and Criminal Investigation Department locked them out which was not fair. It was agreed that a letter be written to the Office of the Attorney General instructing him to advise the concerned authorities to waive such conditions or ask for clearances from applicants' country of domicile while advertising for positions.

(ii) The Vetting of Judges and Magistrates (Amendment) Bill, 2015

The Committee considered and adopted its report on the Bill. The adoption of the report was proposed by Hon. Olago Aluoch and seconded by Hon. John Njoroge. No Member dissented to the adoption of the report.

The meeting resolved that the two reports adopted be tabled in the House at 2.30 p.m. of the same day.

MIN NO. JLA/205/2015:- - **ADJOURNMENT**

There being no other business to transact, the sitting adjourned thirty minutes past eleven in the morning.

APPENDIX 2



DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

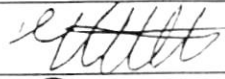

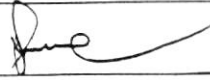




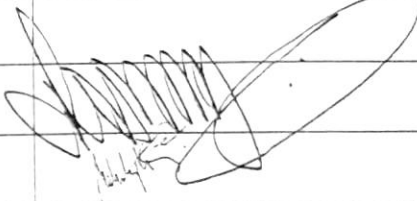
MEMBERS ATTENDANCE

Date: 7th June 2015

Venue: MEETING CENTRE

Agenda: ADOPTION OF REPORT ON THE PROGRESS OF THE DEPARTMENT OF JUSTICE & LEGAL AFFAIRS
2014

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Charles Gimose	
8.	Hon. Christine Ombaka (Dr.)	
9.	Hon. David Ochieng'	
10.	Hon. Fatuma Ibrahim	
11.	Hon. Florence Kajuju	
12.	Hon. Irungu Kang'ata	
13.	Hon. James Bett	
14.	Hon. Johanna Ngeno	
15.	Hon. John Munuve	

16.	Hon. John M. Waiganjo	
17.	Hon. John Njoroge	
18.	Hon. John Olago Aluoch	
19.	Hon. Kamoti W. Mwamkale	
20.	Hon. Mohamed Abdi Haji	
21.	Hon. Moses Cheboi	
22.	Hon. Njoroge Baiya	
23.	Hon. Paul K. Bii	
24.	Hon. Peter Kaluma	
25.	Hon. Robert Mutemi (Bishop)	
26.	Hon. Sammy Koech	
27.	Hon. T.J. Kajwang	
28.	Hon. Waihenya Ndirangu	
29.	Hon. William Cheptumo	

George Gazemba

For: The Clerk of the National Assembly

APPENDIX 3



REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Constitution of Kenya (Amendment) (No. 3) Bill, 2015**

Article 118(1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The Constitution of Kenya (Amendment) (No. 3) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Friday, May 15th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Vetting of Judges and Magistrates (Amendment) Bill 2015**

Article 118(1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The Vetting of Judges and Magistrates (Amendment) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the first time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Friday, May 15th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

REPUBLIC OF KENYA



**ELEVENTH PARLIAMENT
THE SENATE**

STANDING COMMITTEE ON INFORMATION AND TECHNOLOGY

In the Matter of Consideration of

The Office of the County Printer Bill, (Senate Bill No. 42 of 2014)

Article 118 of the Constitution and standing order 130 of the Senate Standing Orders.

PUBLIC HEARING/RECEIPT OF MEMORANDA

Following the introduction of the above listed Bill to the Senate, the Bill was Committed to the Standing Committee on Information and Technology for Consideration pursuant to standing order 130 of the Senate Standing Orders.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4) of the Senate Standing Orders, the Standing Committee on Information and Technology now invites interested members of the public and organizations to submit any representations that they may have on the above Bill.

The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on **Wednesday 20th May, 2015 from 10:30a.m. to 12:30 p.m. at Shimba Hills Hall, KICC, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi,** hand-delivered to the Office of the Clerk, **First Floor, Main Parliament Building, Nairobi** or emailed to cSenate@Parliament.go.ke, to be received on or before **Wednesday 20th May, 2015 at 5.00 p.m.**

A copy of the Bill can be downloaded from the Parliament of Kenya website, www.parliament.go.ke/senate

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Two-Third Gender Rule Laws (Amendment) Bill, 2015**

Article 118(1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The Two-Third Gender Rule Laws (Amendment) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Wednesday, May 20th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

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